IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

Crl.MC.No. 2544 of 2007()

CMP.8/2007 of SUB DIVISIONAL MAGISTRATE, PERINTHALMANNA

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PETITIONER: COUNTER PETITIONER

CHERAKKATTIL ABDULLA, S/O. UNNEEN,
EDAYIKKAL ALIPARAMBA, MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS: STATE & PETITIONER

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1. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31.

2. C.K.MUSTHAFA, S/O. KUNHAHAMMED,
CHEMMAMKUZHIYIL HOUSE, EDAYIKKAL,
ALIPARAMBA, MALAPPURAM DISTRICT.

R1 BY PUBLIC PROSOECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 08/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2544 of 2007

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Dated this the 8th day of August, 2007

O R D E R

Against the petitioner a conditional order under Section 133(1) (a) Cr.P.C. has been issued by the Sub Divisional Magistrate, copy of that order is Annex.C. The petitioner, it is submitted, did appear before the learned Magistrate in pursuance of Annex.C. He denied the existence of a public right in respect of the pathway, submits the learned counsel for the petitioner. If that he so, it is the duty of the Sub Divisional Magistrate to straight away proceed to hold an enquiry under Section 137 Cr.P.C. and pass an appropriate order. Only when such an order is passed and such order is against the petitioner, can the proceedings continue thereafter. The position of law is well settled.

2. The learned counsel for the petitioner submits that there is no satisfactory material even to issue a conditional order under Section 133 Cr.P.C. The learned counsel relies on Annex.B report of the Village Officer.

3. I need not consider that question in detail now. I am of the view that the Sub Divisional Magistrate cannot be reckoned as a

prisoner of the report submitted by the Village Officer. Be that as it may, I am satisfied that interests of justice shall be served eminently by issuing a direction to the Sub Divisional Magistrate to proceed under Section 137 Cr.P.C. and pass an appropriate order as to whether there is reliable evidence in support of the denial by the petitioner of the existence of a right in respect of the pathway. No time bound direction appears to be necessary. But I observe that I expect the Sub Divisional Magistrate to pass appropriate orders under Section 137 Cr.P.C. as expeditiously as possible, at any rate, within a period of two months from the date on which a copy of this order is produced before the Sub Divisional Magistrate.

4. This Crl.M.C. is allowed as above.

5. Hand over copy of the order.

(R. BASANT)
Judge

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